

AMENDED IN ASSEMBLY JULY 9, 2003
AMENDED IN ASSEMBLY JUNE 27, 2003
AMENDED IN SENATE APRIL 22, 2003
AMENDED IN SENATE APRIL 3, 2003

SENATE BILL

No. 649

Introduced by Senator Kuehl
(Coauthors: Assembly Members Jackson and Koretz)

February 21, 2003

An act to add Section 20676 to the Public Contract Code, and to amend Sections 2207, 2717, and 2774 of the Public Resources Code, relating to mining.

LEGISLATIVE COUNSEL'S DIGEST

SB 649, as amended, Kuehl. Mining.

(1) Existing law prohibits a state agency from purchasing or utilizing sand, gravel, aggregates, or other minerals produced from a surface mining operation subject to the Surface Mining and Reclamation Act of 1975, unless the operation is identified in a specified list.

This bill would prohibit operators of surface mines *in California*, whose operations are not identified in that specified list, from selling ~~materials~~ *that California mined material* to a local agency.

(2) Existing law, the Surface Mining and Reclamation Act of 1975, governs surface mining operations and reclamation of mined lands. The State Mining and Geology Board imposes an annual reporting fee on each active or idle mining operation. Existing law provides that the maximum fee for any single mining operation may not be less than \$50

and may not exceed \$2,000, and the total revenue generated by the reporting fees may not exceed \$1,000,000, as adjusted for the cost of living.

This bill would instead limit the annual reporting fee to not less than \$100 and not more than \$4,000 for any single mining operation, as adjusted for the cost of living beginning in the 2005–06 fiscal year. The bill would limit the total revenue generated by reporting fees to \$3,500,000, as adjusted for the cost of living beginning in the 2005–06 fiscal year.

(3) Existing law requires the Director of Conservation to remediate or complete reclamation of abandoned mine lands by January 1, 2007; and, not later than January 1 of each year, to report to the Legislature on any abandoned mine remediation projects that are proposed for the following year.

This bill would create the Abandoned Mine Reclamation and Minerals Subaccount in the Mine Reclamation Account. The bill would authorize the Department of Conservation to expend the moneys in the subaccount, upon appropriation by the Legislature, for specified purposes regarding abandoned mine lands. The bill would require the State Mining and Geology Board to collect a fee of \$5 per ounce of gold and 10¢ per ounce of silver mined within the state for deposit into the subaccount.

(4) The bill would make related changes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 20676 is added to the Public Contract
2 Code, to read:

3 20676. Operators of surface mines *in this state*, whose
4 operations are not identified in the list published pursuant to
5 subdivision (b) of Section 2717 of the Public Resources Code, may
6 not sell ~~materials~~ *that California mined material* to a local agency.

7 SEC. 2. Section 2207 of the Public Resources Code is
8 amended to read:

9 2207. (a) The owner, lessor, lessee, agent, manager, or other
10 person in charge of any mining operation of whatever kind or
11 character within the state shall forward to the director annually not

1 later than a date established by the director, upon forms furnished
2 by the board, a report that identifies all of the following:

3 (1) The name, address, and telephone number of the person,
4 company, or other owner of the mining operation.

5 (2) The name, address, and telephone number of a designated
6 agent who resides in this state, and who will receive and accept
7 service of all orders, notices, and processes of the lead agency,
8 board, director, or court.

9 (3) The location of the mining operation, its name, its mine
10 number as issued by the Bureau of Mines or the director, its
11 section, township, range, latitude, longitude, and approximate
12 boundaries of the mining operation marked on a United States
13 Geological Survey 7¹/₂-minute or 15-minute quadrangle map.

14 (4) The lead agency.

15 (5) The approval date of the mining operation's reclamation
16 plan.

17 (6) The mining operation's status as active, idle, reclaimed, or
18 in the process of being reclaimed.

19 (7) The commodities produced by the mine and the type of
20 mining operation.

21 (8) Proof of annual inspection by the lead agency.

22 (9) Proof of financial assurances.

23 (10) Ownership of the property, including government
24 agencies, if applicable, by the assessor's parcel number, and total
25 assessed value of the mining operation.

26 (11) The approximate permitted size of the mining operation
27 subject to Chapter 9 (commencing with Section 2710), in acres.

28 (12) The approximate total acreage of land newly disturbed by
29 the mining operation during the previous calendar year.

30 (13) The approximate total of disturbed acreage reclaimed
31 during the previous calendar year.

32 (14) The approximate total unreclaimed disturbed acreage
33 remaining as of the end of the calendar year.

34 (15) The total production for each mineral commodity
35 produced during the previous year.

36 (16) A copy of any approved reclamation plan and any
37 amendments or conditions of approval to any existing reclamation
38 plan approved by the lead agency.

39 (b) Every year, not later than the date established by the
40 director, the person submitting the report pursuant to subdivision

1 (a) shall forward to the lead agency, upon forms furnished by the
2 board, a report that provides all of the information specified in
3 paragraphs (1) to (14), inclusive, of subdivision (a).

4 (c) Subsequent reports shall include only changes in the
5 information submitted for the items described in subdivision (a),
6 except that, instead of the approved reclamation plan, the reports
7 shall include any reclamation plan amendments approved during
8 the previous year. The reports shall state whether review of a
9 reclamation plan, financial assurances, or an interim management
10 plan is pending under subdivision (b), (c), (d), or (h) of Section
11 2770, or whether an appeal before the board or lead agency
12 governing body is pending under subdivision (e) or (h) of Section
13 2770. The director shall notify the person submitting the report and
14 the owner's designated agent in writing that the report and the fee
15 required pursuant to subdivision (d) have been received, specify
16 the mining operation's mine number if one has not been issued by
17 the Bureau of Mines, and notify the person and agent of any
18 deficiencies in the report within 90 days of receipt. That person or
19 agent shall have 30 days from receipt of the notification to correct
20 the noted deficiencies and forward the revised reports to the
21 director and the lead agency. Any person who fails to comply with
22 this section, or knowingly provides incorrect or false information
23 in reports required by this section, may be subject to an
24 administrative penalty as provided in subdivision (c) of Section
25 2774.1.

26 (d) (1) The board shall impose, by regulation, pursuant to
27 paragraph (2), an annual reporting fee on, and method for
28 collecting annual fees from, each active or idle mining operation.
29 The maximum fee for any single mining operation may not exceed
30 four thousand dollars (\$4,000) annually and may not be less than
31 one hundred dollars (\$100) annually, as adjusted for the cost of
32 living as measured by the California Consumer Price Index for all
33 urban consumers, calendar year averages, using the percentage
34 change in the previous year, beginning with the 2005–06 fiscal
35 year and annually thereafter.

36 (2) (A) The board shall adopt, by regulation, a schedule of fees
37 authorized under paragraph (1) to cover the department's cost in
38 carrying out this section and Chapter 9 (commencing with Section
39 2710), as reflected in the Governor's Budget, and may adopt those
40 regulations as emergency regulations. In establishing the schedule

1 of fees to be paid by each active and idle mining operation, the fees
2 shall be calculated on an equitable basis reflecting the size and type
3 of operation. The board shall also consider the total assessed value
4 of the mining operation, the acreage disturbed by mining
5 activities, and the acreage subject to the reclamation plan.

6 (B) Regulations adopted pursuant to this subdivision shall be
7 adopted by the board in accordance with Chapter 3.5
8 (commencing with Section 11340) of Part 1 of Division 3 of Title
9 2 of the Government Code. The adoption of any emergency
10 regulations pursuant to this subdivision shall be considered
11 necessary to address an emergency and shall be considered by the
12 Office of Administrative Law to be necessary for the immediate
13 preservation of the public peace, health, safety, and general
14 welfare.

15 (3) The total revenue generated by the reporting fees may not
16 exceed, and may be less than, the amount of three million five
17 hundred thousand dollars (\$3,500,000), as adjusted for the cost of
18 living as measured by the California Consumer Price Index for all
19 urban consumers, calendar year averages, using the percentage
20 change in the previous year, beginning with the 2005–06 fiscal
21 year and annually thereafter. If the director determines that the
22 revenue collected during the preceding fiscal year was greater or
23 less than the cost to operate the program, the board shall adjust the
24 fees to compensate for the overcollection or undercollection of
25 revenues.

26 (4) (A) The reporting fees established pursuant to this
27 subdivision shall be deposited in the Mine Reclamation Account,
28 which is hereby created. Any fees, penalties, interest, fines, or
29 charges collected by the director or board pursuant to this chapter
30 or Chapter 9 (commencing with Section 2710) shall be deposited
31 in the Mine Reclamation Account. The money in the account shall
32 be available to the department and board, upon appropriation by
33 the Legislature, solely to carry out this section , and compliance
34 with Chapter 9 (commencing with Section 2710), including but
35 not limited to, classification and designation of areas with mineral
36 resources of statewide or regional significance, reclamation plan
37 and financial assurance review, mine inspection, abandoned mine
38 remediation, and enforcement.

39 (B) In addition to reporting fees, the board shall collect five
40 dollars (\$5) per ounce of gold and ten cents (\$0.10) per ounce of

1 silver mined within the state and shall deposit the fees collected in
2 the Abandoned Mine Reclamation and Minerals Fund
3 Subaccount, which is hereby created in the Mine Reclamation
4 Account. The department may expend the moneys in the
5 subaccount, upon appropriation by the Legislature, for only the
6 purposes of Sections 2796.5 and 2797.

7 (5) In case of late payment of the reporting fee, a penalty of not
8 less than one hundred dollars (\$100) or 10 percent of the amount
9 due, whichever is greater, plus interest at the rate of 1½ percent
10 per month, computed from the delinquent date of the assessment
11 until and including the date of payment, shall be assessed. New
12 mining operations that have not submitted a report shall submit a
13 report prior to commencement of operations. The new operation
14 shall submit its fee according to the reasonable fee schedule
15 adopted by the board, and the month that the report is received
16 shall become that operation's anniversary month.

17 (e) The lead agency, or the board when acting as the lead
18 agency, may impose a fee upon each mining operation to cover the
19 reasonable costs incurred in implementing this chapter and
20 Chapter 9 (commencing with Section 2710).

21 (f) For purposes of this section, "mining operation" has the
22 same meaning as "surface mining operation" as defined in
23 Section 2735, unless excepted by Section 2714. For the purposes
24 of fee collections only, "mining operation" may include one or
25 more mines operated by a single operator or mining company on
26 one or more sites, if the total annual combined mineral production
27 for all sites is less than 100 troy ounces for precious metals, if
28 precious metals are the primary mineral commodity produced, or
29 less than 100,000 short tons if the primary mineral commodity
30 produced is not precious metals.

31 (g) Any information in reports submitted pursuant to
32 subdivision (a) that includes or otherwise indicates the total
33 mineral production, reserves, or rate of depletion of any mining
34 operation may not be disclosed to any member of the public, as
35 defined in subdivision (g) of Section 6252 of the Government
36 Code. Other portions of the reports are public records unless
37 excepted by statute. Statistical bulletins based on these reports and
38 published under Section 2205 shall be compiled to show, for the
39 state as a whole and separately for each lead agency, the total of
40 each mineral produced therein. In order not to disclose the

1 production, reserves, or rate of depletion from any identifiable
2 mining operation, no production figure shall be published or
3 otherwise disclosed unless that figure is the aggregated production
4 of not less than three mining operations. If the production figure
5 for any lead agency would disclose the production, reserves, or
6 rate of depletion of less than three mining operations or otherwise
7 permit the reasonable inference of the production, reserves, or rate
8 of depletion of any identifiable mining operation, that figure shall
9 be combined with the same figure of not less than two other lead
10 agencies without regard to the location of the lead agencies. The
11 bulletin shall be published annually by June 30 or as soon
12 thereafter as practicable.

13 SEC. 3. Section 2717 of the Public Resources Code is
14 amended to read:

15 2717. (a) The board shall submit to the Legislature on
16 December 1st of each year a report on the actions taken pursuant
17 to this chapter during the preceding fiscal year. The report shall
18 include a statement of the actions, including legislative
19 recommendations, that are necessary to carry out more completely
20 the purposes and requirements of this chapter.

21 (b) For purposes of ensuring compliance with Section 10295.5
22 of the Public Contract Code, the department shall, at a minimum,
23 quarterly publish in the California Regulatory Notice Register, or
24 otherwise make available upon request to the Department of
25 General Services or any other state agency, a list identifying all of
26 the following:

27 (1) Surface mining operations for which a report is required
28 and has been submitted pursuant to Section 2207 that indicates
29 ~~both compliance with the approved reclamation plan and that~~
30 ~~sufficient financial assurances have been approved.~~ *all of the*
31 *following:*

32 (A) *The reclamation plan and financial assurances have been*
33 *approved pursuant to this chapter.*

34 (B) *Compliance with state reclamation standards developed*
35 *pursuant to Section 2773.*

36 (C) *Compliance with the financial assurance guidelines*
37 *developed pursuant to Section 2773.1.*

38 (D) *The annual reporting fee has been submitted to the*
39 *Department of Conservation.*

(2) Surface mining operations for which an appeal is pending before the board pursuant to subdivision (e) of Section 2770, provided that the appeal shall not have been pending before the board for more than 180 days.

(3) *Surface mining operations for which an inspection is required and for which an inspection notice has been submitted by the lead agency pursuant to Section 2774 that indicates both compliance with the approved reclamation plan and that sufficient financial assurances, pursuant to Section 2773.1, have been approved and secured.*

SEC. 4. Section 2774 of the Public Resources Code is amended to read:

2774. (a) Every lead agency shall adopt ordinances in accordance with state policy which establish procedures for the review and approval of reclamation plans and financial assurances and the issuance of a permit to conduct surface mining operations, except that any lead agency without an active surface mining operation in its jurisdiction may defer adopting an implementing ordinance until the filing of a permit application. The ordinances shall establish procedures requiring at least one public hearing and shall be periodically reviewed by the lead agency and revised, as necessary, to ensure that the ordinances continue to be in accordance with state policy.

(b) The lead agency shall conduct an inspection of a surface mining operation within six months of receipt by the lead agency of the surface mining operation's report submitted pursuant to Section 2207, solely to determine whether the surface mining operation is in compliance with this chapter. In no event shall a lead agency inspect a surface mining operation less than once in any calendar year. The lead agency may cause an inspection to be conducted by a state-registered geologist, state-registered civil engineer, state-licensed landscape architect, or state-registered forester, who is experienced in land reclamation and who has not been employed by a surface mining operation within the jurisdiction of the lead agency in any capacity during the previous 12 months. All inspections shall be conducted using a form developed by the department and approved by the board. The operator shall be solely responsible for the reasonable cost of the inspection. The lead agency shall notify the director within 30 days of the date of completion of the inspection that the inspection has

1 been conducted. The notice shall contain a statement regarding the
2 surface mining operation's compliance with this chapter, shall
3 include a copy of the completed inspection form, and shall specify
4 which aspects of the surface mining operations, if any, are
5 inconsistent with this chapter. If the surface mining operation has
6 a review of its reclamation plan, financial assurances, or an interim
7 management plan pending under subdivision (b), (c), (d), or (h) of
8 Section 2770, or an appeal pending before the board or lead agency
9 governing body under subdivision (e) or (h) of Section 2770, the
10 notice shall so indicate. The lead agency shall forward to the
11 operator a copy of the notice, a copy of the completed inspection
12 form, and any supporting documentation, including, but not
13 limited to, any inspection report prepared by the geologist, civil
14 engineer, landscape architect, or forester.

15 (c) Prior to approving a surface mining operation's reclamation
16 plan, financial assurances, including existing financial assurances
17 reviewed by the lead agency pursuant to subdivision (c) of Section
18 2770, or any amendments, the lead agency shall submit the plan,
19 assurances, or amendments to the director for review. All
20 documentation for that submission shall be submitted to the
21 director at one time. When the lead agency submits a reclamation
22 plan or plan amendments to the director for review, the lead agency
23 shall also submit to the director, for use in reviewing the
24 reclamation plan or plan amendments, information from any
25 related document prepared, adopted, or certified pursuant to
26 Division 13 (commencing with Section 21000), and shall submit
27 any other pertinent information. The lead agency shall certify to
28 the director that the reclamation plan is in compliance with the
29 applicable requirements of Article 1 (commencing with Section
30 3500) of Chapter 8 of Division 2 of Title 14 of the California Code
31 of Regulations in effect at the time that the reclamation plan is
32 submitted to the director for review.

33 (d) (1) The director shall have 30 days from the date of receipt
34 of a reclamation plan or plan amendments submitted pursuant to
35 subdivision (c), and 45 days from the date of receipt of financial
36 assurances submitted pursuant to subdivision (c), to prepare
37 written comments, if the director so chooses. The lead agency shall
38 evaluate any written comments received from the director relating
39 to the reclamation plan, plan amendments, or financial assurances
40 within a reasonable amount of time.

1 (2) The lead agency shall prepare a written response to the
2 director's comments describing the disposition of the major issues
3 raised. In particular, if the lead agency's position is at variance with
4 any of the recommendations made, or objections raised, in the
5 director's comments, the written response shall address, in detail,
6 why specific comments and suggestions were not accepted. Copies
7 of any written comments received and responses prepared by the
8 lead agency shall be forwarded to the operator.

9 (3) To the extent that there is a conflict between the comments
10 of a trustee agency or a responsible agency that are based on the
11 agency's statutory or regulatory authority and the comments of
12 other commenting agencies which are received by the lead agency
13 pursuant to Division 13 (commencing with Section 21000)
14 regarding a reclamation plan or plan amendments, the lead agency
15 shall consider only the comments of the trustee agency or
16 responsible agency.

17 (e) Lead agencies shall notify the director of the filing of an
18 application for a permit to conduct surface mining operations
19 within 30 days of an application being filed with the lead agency.
20 By July 1, 1991, each lead agency shall submit to the director for
21 every active or idle mining operation within its jurisdiction, a copy
22 of the mining permit required pursuant to Section 2774, and any
23 conditions or amendments to those permits. By July 1 of each
24 subsequent year, the lead agency shall submit to the director for
25 each active or idle mining operation a copy of any permit or
26 reclamation plan amendments, as applicable, or a statement that
27 there have been no changes during the previous year. Failure to file
28 with the director the information required under this section shall
29 be cause for action under Section 2774.4.

30 SEC. 5. The provisions of this act are severable. If any
31 provision of this act or its application is held invalid, that invalidity
32 may not affect other provisions or applications that can be given
33 effect without the invalid provision or application.

